

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FRANCIS TULLY,)	
)	
Plaintiff,	)	C.A. No.: 06-0581 (GMS)
)	
v.)	
)	
ANTHONY COLLICK,	)	TRIAL BY JURY
	)	OF SIX DEMANDED
Defendant.)	

**RESPONSE OF DEFENDANT, ANTHONY COLLICK, TO
PLAINTIFF'S MOTION TO REOPEN THE CASE**

1. Plaintiff initiated the initial Complaint on July 30, 2006 in the United States District Court for the Eastern District of Pennsylvania, alleging damages from an injury that occurred on August 5, 2004.
2. Defendant filed a motion to dismiss the Complaint for lack of personal jurisdiction. On September 11, 2006, as an alternative relief, Judge Giles of the United States District Court for the Eastern District of Pennsylvania ordered transfer of venue to the Delaware District Court to resolve the issue of lack of personal jurisdiction. See copy of Order attached as Exhibit "A".
3. On September 15, 2006, Plaintiff filed the same Complaint in the United State District Court for the District Court of Delaware as they did in the United States District Court for the Eastern District of Pennsylvania. See copy of Complaint attached as Exhibit "B".
4. On September 19, 2006, Plaintiff and Defendant's counsel were sent letters by the Court directing them to obtain association with local counsel on or before October 19, 2006 pursuant to *Local Rule 83.5(d) of the Civil Practice for the United States District Court for the District of Delaware*. Defendant, through local counsel filed an Answer to the Complaint on

October 5, 2006 and later filed a Motion to Dismiss on or about October 30, 2006. See Copy of Answer and Motion to Dismiss as Exhibits “C” and “D” respectively.

5. On November 17, 2006, the Court entered an Order to Show Cause due to Plaintiff’s failure to retain local counsel and failure to answer Defendant’s Motion to Dismiss. Plaintiff was given 30 days to show cause or the case would be dismissed without further notice pursuant to *District of Delaware Local Rule 41.1*. See Order attached as Exhibit “E”. Contrary to the rules and letter sent to him on September 19, 2006 and without association with local counsel, out of state attorney, Frank J. Marcone filed a Response to Defendant’s Motion to Dismiss on November 29, 2006.

6. On December 20, 2006, the case was dismissed by the Court.

7. On February 12, 2006, Albert Greto, a Delaware licensed attorney, finally filed his entry of appearance for Plaintiff, nearly two months after the case was dismissed. At the time of the entry of appearance, Pennsylvania attorney Frank J. Marcone was admitted pro hac vice for Plaintiff.

8. It was not until March 28, 2007, nearly three months after the dismissal of the case, that Plaintiff filed its Motion to Reopen the Case.

9. Approving the reinstatement of the case would be futile since it is time-barred by the Statute of Limitations. The action is time-barred under 10 *Del. C.* §8119, Delaware’s two year statute of limitations for personal injury allegations. The Delaware statute of limitations is not tolled when a Plaintiff files a law suit against the Defendant in a Court which does not have in personam jurisdiction over the Defendant. This similar issue was raised in the United States Court of Appeals for the Third Circuit in *Barber Young, Personal Representative of the Estate of*

James Young v. Clantech, Inc., 863 F.2d 300 (3d Cir., 1988). In the case at bar, the District Court for the Eastern District of Pennsylvania specifically held that they did not have personal jurisdiction over the Defendant. The alleged injury occurred on August 5, 2004. See Exhibit “B” at paragraph 4. The Complaint was not filed with the U.S. District Court for the District of Delaware, which had personal jurisdiction over the Defendant, until September 13, 2006. Therefore, this claim is time-barred by the applicable two year statute of limitations for the State of Delaware.

10. Although Plaintiff does not cite any authority in his Motion to Reopen, *Rule 60(b) of the Federal Rules of Civil Procedure* provides a mechanism for parties to obtain relief from judgment or order. See *Fed. R. Civ. P. 60(b)*. Motions filed under *Rule 60(b)* are committed to the “sound discretion” of the district court. *Ross v. Meagon*, 638 F.2d 646, 648 (3d Cir. 1981). However, relief under *Rule 60(b)* is available only where the “overriding interest in the finality and repose of judgments may properly be overcome.” *Martinez-McBean v. Government of the Virgin Islands*, 562 F.2d 908, 913 (3d Cir. 1977). Relief under *Rule 60(b)* remedy is “extraordinary, and special circumstances must justify granting relief under it.” *Page v. Schweiker*, 748 F.2d 150, 158 (3d Cir. 1986). It is established law that “a legal error, without more cannot justify granting a *Rule 60(b)* motion.” *Smith v. Evans*, 853 F.2d 155, 158 (3d Cir. 1988). Plaintiff has failed to establish that there are extraordinary and special circumstances in the instant case that would justify a *Rule 60(b)* remedy. Plaintiff did not claim that the dismissal should be revoked because of a mistake, inadvertence, surprise, excusable neglect, newly discovered evidence or fraud or misconduct by the Defendant. In fact, Plaintiff’s only basis for the Motion to Reopen is that Plaintiff’s out of state counsel was unaware that his response, filed

without association with local counsel against the Rules, would not be sufficient as a response to the Order of Rule to Show Cause. Plaintiff's ignorance of substantial law, the requirement of out of state counsel to associate with local counsel pursuant to *Local Rule 83.5(d) of the Civil Practice for the United States District Court for the District of Delaware* in order to practice law in the district as a pro vice admitted attorney, is not extraordinary nor a special circumstance for which a Rule 60(b) remedy should be afforded.

WHEREFORE, Defendant, Anthony Collick, respectfully requests that this honorable Court enter in an Order denying Plaintiff's Motion to Reinstate the Above-Captioned Case with prejudice.

RESPECTFULLY SUBMITTED,

REGER RIZZO KAVULICH & DARNALL LLP

/s/Louis J. Rizzo

Louis J. Rizzo

Delaware State Bar I.D. No.3374

1001 Jefferson Plaza, Suite 202

Wilmington, DE 19801

(302) 652-3611

Attorney for Defendant

Dated: April 12, 2007

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FRANCIS TULLY,)	
)	
Plaintiff,	)	C.A. No.: 06-0581 (GMS)
)	
v.)	
)	
ANTHONY COLLICK,	)	TRIAL BY JURY
	)	OF SIX DEMANDED
Defendant.)	

ORDER

AND NOW, this ____ day of _____, 2007, upon consideration of the Response of Defendant, Anthony Collick, to Plaintiff's Motion to Reopen Case, and any response thereto;

IT IS HEREBY ORDERED that the Motion of Plaintiff to Reopen Case is DENIED and Plaintiff's Complaint is dismissed with prejudice.

BY THE COURT:

The Honorable Gregory M. Sleet

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FRANCIS TULLY,)	
)	
Plaintiff,	)	C.A. No.: 06-0581 (GMS)
)	
v.)	
)	
ANTHONY COLLICK,	)	TRIAL BY JURY
	)	OF SIX DEMANDED
Defendant.)	

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify on this 12th day of April, 2007 that a true and correct copy of the Response of Defendant, Anthony Collick, to Plaintiff's Motion to Reopen Case was served electronically and by first class mail, postage prepaid upon the following:

Frank Marcone, Esquire
2530 N. Providence Road
Media, PA 19063

Albert Greto
O'Brien, Belland & Bushinski LLC
1701 Shallcross Avenue, Suite C
P.O. Box 756
Wilmington, DE 19899-0756

REGER RIZZO KAVULICH & DARNALL LLP

/s/Louis J. Rizzo

Louis J. Rizzo
Delaware State Bar I.D. No.3374
1001 Jefferson Plaza, Suite 202
Wilmington, DE 19801
(302) 652-3611
Attorney for Defendant

Dated: April 12, 2007

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FRANCIS TULLY

Plaintiff,

v.

ANTHONY COLLUCK,

Defendant.

ENTERED 06-581
SEP 13 2006 CIVIL NO. 06-3413

CLERK OF COURT

FILED

SEP 13 2006

MICHAEL E. KUNZ, Clerk
By _____ Dep. Clerk

ORDER

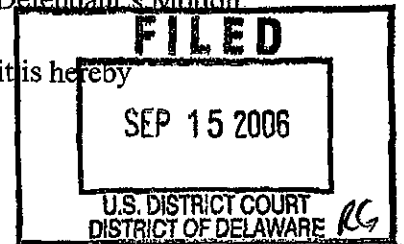
06-581

AND NOW, this 11th day of September, 2006, upon consideration of Defendant's Motion to Dismiss Plaintiff's Complaint or in the Alternative for Transfer of Venue, it is hereby

ORDERED that Defendant's Motion is GRANTED in as much as:

1. The accident occurred in the State of Delaware; and
2. The complaint alleges that the accident occurred as a result of the building code of the State of Delaware or of New Castle, Delaware; and
3. Plaintiff received medical treatment at Christiana Hospital in Delaware.

Therefore, the Court concludes it has no personal jurisdiction over the Defendant and, even if it did, all necessary evidence to prove the claim or to allow a defense to Plaintiff's claims is located in the State of Delaware.



BY THE COURT:

James T. Giles, J.

9/13/06
am:ic
Marcane Foster - mail

docket to
Giles

Exhibit B

350
JTG
Frank J. Marcone, Esquire
2530 N. Providence Road
Media, Pennsylvania 19063

06-581

Att. ID# 8967
Tel. 484 442 8305
Fax 484 442 8306

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FILED

FRANCIS TULLY
3131 MEETINGHOUSE ROAD
APT A 7
MARCUS HOOK, PENNSYLVANIA 19061
Plaintiff

AUG - 2 2006

Dep. Clerk

No. **06 - 3413**

vs.

ANTHONY COLLICK
928 CLAYTON STREET
NEW CASTLE, DELAWARE 19720
Defendant

06-581

Jury trial

FILED

SEP 15 2006

U.S. DISTRICT COURT
DISTRICT OF DELAWARE

COMPLAINT

Francis Tully, by his attorney, Frank J. Marcone, Esquire, files this Complaint averring negligence and an injury resulting therefrom and in support of his Complaint he avers the following:

1. Jurisdiction of the Court is based upon the provisions of 28 U.S.C.A § 1332 wherein diversity of citizenship is averred.
2. Francis Tully is an individual who resides within the Commonwealth of Pennsylvania and more specifically at 3131 MEETINGHOUSE ROAD : APT A 7, MARCUS HOOK, PENNSYLVANIA 19061. He is the Plaintiff herein.
3. Anthony Collick is an individual who resides in the State of Delaware and more

11
8-3-06
AK

specifically at 928 Clayton Street, New Castle Delaware. 19720.

4. On or about the fifth day of August , 2004, the Plaintiff was at the home of the Defendant, 928 Clayton Street, New Castle, Delaware where he had been invited for the purposes of providing replacement windows for the structure owned and occupied by the Defendant.

5. The time was about 7:00 P.M. and the Plaintiff approached the home and rang the doorbell. The Defendant appeared and after a short discussion occurring with the Plaintiff outside and the Defendant, inside the residence, the Plaintiff retreated to his vehicle for the purposes of recovering his replacement window samples.

6. The Plaintiff thereupon returned to the residence and attempted to gain entrance there. As he was mounting the steps which form the front entrance to the residence, the Plaintiff was caused to fall and gash his left shin or leg causing a serious wound which bled profusely.

7. The fall was the result of a condition which the Defendant had permitted to exist and consisted of a set of steps forming the entryway into the home when said steps were uneven, were out of code and the risers were not those which were required by code. The Plaintiff fell while attempting to climb the entry way stairs carrying his sample bags and no one opened the outside door for him contributing to his inability to safely negotiate the stairs.

8. Immediately following the fall, the Plaintiff suffered a massive hemorrhaging of his leg and he was able to get back to his car where he had a large clean white towel. He was able to wrap the injury temporarily.

9. The Defendant, recognizing the severity of the laceration and loss of surface

skin, immediately summoned 911 which resulted in the arrival of an ambulance.

10. The Defendant thereafter was rushed to Christiana Hospital where he was admitted to the Emergency Room and eventually was sutured. He believes he had approximately 12 sutures and he was then released in the early morning hours of the following day.

11. When the above described incident occurred, the Plaintiff was and remains suffering from Diabetes and the wound resisted conservative efforts to heal. He was given continuous treatment and during the treatment was instructed that he could not continue his employment.

12. As a result of the injury and the medical care required to bring the wound to a state that was acceptable resulted in medical costs in excess of \$7,500.00.

13. That the Plaintiff was completely disabled and his loss of earnings exceeded \$45,000.00 and is continuing.

COUNT ONE
PAIN AND SUFFERING

14. The Plaintiff incorporates by reference all the above averments in paragraphs one through thirteen and continues as follows:

15. As a result of the injury described herein the Plaintiff suffered extraordinary pain and disability. He was unable to attend to his personal needs and required nursing and continued medical treatment to attend to the severity of the wound.

16. As a result of the injury described herein, the Plaintiff suffered both physical and

mental pain and suffering from the time of the injury to the present time and he expects to suffer the affects of said injury long into the future.

17. The physical pain and suffering was a direct result of the negligence of the Defendant, Anthony Collick.

18. The Plaintiff has also suffered from the disability resulting from the negligence of the Defendant and said disability has resulted in a claim for pain and suffering.

WHEREFORE, the Plaintiff prays the Court to enter a Judgement in his favor and against the Defendant, Anthony Collick in an amount in excess of \$100,000 on Count Once.

COUNT TWO
LOSS OF EARNINGS AND
MEDICAL EXPENSES

19. The Plaintiff incorporates by reference all the averments contained in Paragraphs one through 18 and continues as follows:

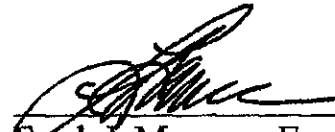
20. As a result of the negligence of the Defendant, the Plaintiff has been caused to be unemployed and to expend various sums for medical expenses.

21. The loss of earnings and medical expenses were the direct and proximate result of the negligence of the Defendant.

22. As a result of the negligence of the Defendant, the Plaintiff has thus far been caused to expend in excess of \$47,000 in loss of earnings and medical expenses

WHEREFORE, the Plaintiff prays the Court enter a judgment against the Defendant and in favor of the Plaintiff in an amount in excess of \$50,000 on Count Two.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Frank J. Marcone', is written over a horizontal line.

Frank J. Marcone, Esquire
Attorney for the Plaintiff
Francis Tully

July 30, 2006

06-581

CIVIL COVER SHEET

06-3413 APPENDIX H

JS 44 (Rev. 11/04)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Francis Tully

(b) County of Residence of First Listed Plaintiff Delaware
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

FRANK J. MARCONE
2530 N. PROVIDENCE Rd. Media Pa

DEFENDANTS

Anthony Collick

County of Residence of First Listed Defendant State of Del.
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- PTF DEF
Citizen of This State ☒ 1 ☐ 1 Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4
Citizen of Another State ☐ 2 ☒ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fed Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC § 1332

Brief description of cause:

Pl. business stolen from Def's house.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S)

IF ANY NONE

(See Instructions):

JUDGE

DOCKET NUMBER

AUG 02 2006

DATE

Aug 2, 2006

SIGNATURE OF ATTORNEY OF RECORD

[Signature]

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

SEP 15 2006

MAG. JUDGE

U.S. DISTRICT COURT
DISTRICT OF DELAWARE

06-581

Scanned

UNITED STATES DISTRICT COURT **06 - 3413** **APPENDIX F**

JTG
FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate trial court.

Address of Plaintiff: 3131 Meetinghouse Road, Apt A-7, Marcus Hook Pa 19061

Address of Defendant: 928 Clayton Street, New Castle, Del.

Place of Accident, Incident or Transaction: 928 Clayton Street, New Castle Delaware
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐

No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐

No ☒

RELATED CASE, IF ANY: None

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☒ Motor Vehicle Personal Injury
6. ☒ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases

(Please specify)

Fall down while on business

ARBITRATION CERTIFICATION

(Check appropriate Category)

I, FRANK J. MARCONE, counsel of record do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought.

DATE: Aug 2, 2006

[Signature]
Attorney-at-Law

8967
Attorney I.D.#

AUG 02 2006

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: Aug 2, 2006

[Signature]
Attorney-at-Law

8967
Attorney I.D.#

Exhibit C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FRANCIS TULLY,)	
)	
Plaintiff,	)	C.A. No.: 06-0581 (GMS)
)	
v.)	
)	
ANTHONY COLLICK,	)	TRIAL BY JURY
	)	OF SIX DEMANDED
Defendant.)	

DEFENDANT'S ANSWER TO COMPLAINT WITH AFFIRMATIVE DEFENSES

1. Admitted upon information and belief.
2. Admitted upon information and belief.
3. Admitted upon information and belief.
4. It is admitted that on or about the 5th day of August, 2004, the Plaintiff was at the home of the Defendant located at 928 Clayton Street, New Castle, Delaware. It is further admitted that the Plaintiff was at the Defendant's home after the Defendant inquired of his local Sear's store regarding replacement windows. The Defendant denies specifically inviting the Plaintiff to his home for any purpose.
5. Admitted upon information and belief.
6. Denied as stated. It is admitted that upon returning from his car, the Plaintiff appeared at Defendant's door way with an injury to his left shin.
7. Denied.
8. Answering Defendant is without sufficient information or knowledge to either admit or deny the averment of this paragraph of the Complaint.
9. Denied as stated. The Defendant did call 911 for the Plaintiff.

10. Answering Defendant is without sufficient information or knowledge to either admit or deny the averments of this paragraph of the Complaint.

11. Answering Defendant is without sufficient information or knowledge to either admit or deny the averments of this paragraph of the Complaint.

12. Answering Defendant is without sufficient information or knowledge to either admit or deny the averments of this paragraph of the Complaint.

13. Denied.

COUNT I

14. Answering Defendant incorporates the responses to paragraphs 1 through 13 herein by reference.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

COUNT II

19. Answering Defendant incorporates its responses to paragraphs 1 through 18 herein by reference.

20. Denied.

21. Denied.

22. Denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's causes of action are barred in whole or in part by the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's causes of action are barred in whole or in part by the assumption of a known risk and/or contributory negligence.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's causes of action are barred in whole or in part by the provisions of the Delaware Comparative Negligence Act.

Plaintiff was comparatively negligent in the following manner:

- (a) He failed to maintain a proper lookout;
- (b) He failed in his duty to use the due care a reasonable person should use under the same circumstances;
- (c) He walked in an area with open and obvious defective and/or dangerous conditions;
- (d) He was otherwise negligent.

FIFTH AFFIRMATIVE DEFENSE

If Plaintiff sustained the injuries as alleged in his Complaint, which is herein strictly denied, then such injuries were caused by the acts or omissions of entities/individuals over which/whom Answering Defendant had no control nor legal duty to control.

SIXTH AFFIRMATIVE DEFENSE

At all times material hereto, Answering Defendant acted with due care and proper care under the circumstances.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate his damages.

EIGHTH AFFIRMATIVE DEFENSE

This Court lacks jurisdiction over the subject matter of the persons to the within action.

NINTH AFFIRMATIVE DEFENSE

Plaintiff has failed to join indispensable, necessary and proper parties.

TENTH AFFIRMATIVE DEFENSE

Answering Defendant neither knew nor by reasonable care could have known of any defective or dangerous condition at its premises.

ELEVENTH AFFIRMATIVE DEFENSE

If a defective or dangerous condition existed on the premises as alleged in the Complaint, then such condition was open and obvious.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's injuries were not causally related to the incident at issue.

THIRTEENTH AFFIRMATIVE DEFENSE

Answering Defendant hereby gives notice that it intends to rely upon such other and further affirmative defenses which become available or apparent during pretrial discovery or litigation proceedings in this action and hereby reserves the right to assert any such affirmative defenses which are incorporated herein by reference and made a part hereof as though set forth fully herein.

WHEREFORE, Answering Defendant respectfully requests that this cause of action against him be dismissed with prejudice.

REGER RIZZO KAVULICH & DARNALL LLP

/s/ Cynthia G. Beam, Esquire

Cynthia G. Beam, Esquire
Delaware State Bar I.D. No. 2565
1001 Jefferson Plaza, Suite 202
Wilmington, DE 19801
(302) 652-3611
Attorney for Defendant

Dated: October 5, 2006

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FRANCIS TULLY,)	
)	
Plaintiff,	)	C.A. No.: 06-00581 (GMS)
)	
v.)	
)	
ANTHONY COLLICK,	)	TRIAL BY JURY
	)	OF SIX DEMANDED
Defendant.)	

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify on this 5th day of October, 2006 that two true and correct copies of Defendant's Answer to Complaint with Affirmative Defenses have been served electronically and/or by first class mail, postage prepaid, upon the following:

Frank Marcone, Esquire
2530 N. Providence Road
Media, PA 19063

REGER RIZZO KAVULICH & DARNALL LLP

/s/ Cynthia G. Beam, Esquire

Cynthia G. Beam, Esquire
Delaware State Bar I.D. No. 2565
1001 Jefferson Plaza, Suite 202
Wilmington, DE 19801
(302) 652-3611
Attorney for Defendant

Dated: October 5, 2006

Answers to Complaints

1:06-cv-00581-GMS Tully v. Collick

U.S. District Court

District of Delaware

Notice of Electronic Filing

The following transaction was received from Beam, Cynthia G. entered on 10/5/2006 at 1:47 PM EDT and filed on 10/5/2006

Case Name: Tully v. Collick

Case Number: 1:06-cv-581

Filer: Anthony Collick

Document Number: 10

Docket Text:

ANSWER to Complaint with Jury Demand by Anthony Collick. (Attachments: # (1) USDC Cover Sheet)(Beam, Cynthia)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1079733196 [Date=10/5/2006] [FileNumber=283446-0]
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Document description: USDC Cover Sheet

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1079733196 [Date=10/5/2006] [FileNumber=283446-1]
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1:06-cv-581 Notice will be electronically mailed to:

Cynthia G. Beam cbeam@regrizlaw.com

1:06-cv-581 Notice will be delivered by other means to:

06-1001

(REV. 07/89)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS OF THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS FRANCIS TULLY b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>NA</u> (EXCEPT IN U.S. PLAINTIFF CASES)	DEFENDANTS ANTHONY COLLICK COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT <u>NEW CASTLE</u> (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Frank Marcone, Esquire, 2530 N. Providence Road, Media, PA 19063	ATTORNEYS (IF KNOWN) Cynthia G. Beam, Esquire c/o Reger Rizzo Kavulich & Darnall LLP, 1001 Jefferson Plaza, Suite 202, Wilmington, DE 19801
II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY) <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <div style="width: 48%;"> <input type="checkbox"/> 1 U.S. Government <input type="checkbox"/> 2 U.S. Government Defendant </div> <div style="width: 48%;"> <input type="checkbox"/> 3 Federal Question <input checked="" type="checkbox"/> 4 Diversity (Indicated Citizenship of Parties in Item III) </div> </div>	III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX (For Diversity Cases Only) FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <div style="width: 48%;"> Citizen of This State <input type="checkbox"/> 1 <input type="checkbox"/> 1 Citizen of Another State <input type="checkbox"/> 2 <input type="checkbox"/> 2 Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 3 </div> <div style="width: 48%;"> PTF DEF Incorporated or Principal Place Of Business in This State <input type="checkbox"/> 4 <input type="checkbox"/> 4 Incorporated and Principal Place Of business in Another State <input type="checkbox"/> 5 <input type="checkbox"/> 5 Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6 </div> </div>
IV. CAUSE OF ACTION (CITE THE U S CIVIL STATUE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE DO NOT CITE JURISDICTION STATUTES UNLESS DIVERSITY)	
V. NATURE OF SUIT (PLACE AN x IN ONE BOX ONLY)	

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-- Med Malpractice <input checked="" type="checkbox"/> 365 Personal Injury -- Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Property Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS -- Third Party 26 USC 7609	<input type="checkbox"/> 422 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Equipment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Right		

VI. ORIGIN (PLACE AN x IN ONE BOX ONLY)					Appeal to District
from <input type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input checked="" type="checkbox"/> 5 another district (specify) Eastern District of PA <input type="checkbox"/> 6 Multidistrict Litigation <input type="checkbox"/> 7 Judge					Magistrate
VII. REQUESTED IN COMPLAINT: <input type="checkbox"/> UNDER F.R.C.P 23					
CHECK IF THIS IS A CLASS ACTION		DEMAND \$		Check YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> YES <input type="checkbox"/> NO	
VIII. RELATED CASE(S) IF ANY (See instructions)					
JUDGE _____			DOCKET NUMBER _____		

DATE: October 5, 2006
 SIGNATURE OF ATTORNEY OF RECORD: /s/ Cynthia G. Beam, Esquire (Delaware State Bar I.D. No. 2565)

UNITED STATES DISTRICT COURT

COVER.USD

Exhibit D

006-1001

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FRANCIS TULLY,

Plaintiff,

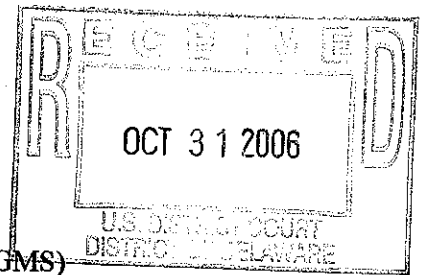
v.

ANTHONY COLLICK,

Defendant.

C.A. No.: 06-0581 (GMS)

TRIAL BY JURY
OF SIX DEMANDED



**MOTION OF DEFENDANT, ANTHONY COLLICK, TO DISMISS
PLAINTIFF'S COMPLAINT DUE TO THE STATUTE OF LIMITATIONS**

1. Introduction: Plaintiff's Complaint seeks damages for personal injuries sustained by Francis Tully while at the residence of Defendant, Collick, who resides in New Castle County, Delaware. The Plaintiff initially filed a suit in the United States District Court for the Eastern District of Pennsylvania on July 30, 2006. Plaintiff's Complaint alleges that the injury occurred on August 5, 2004. The Defendant filed a Motion in the United States District Court for the Eastern District of Pennsylvania seeking to dismiss the Plaintiff's Complaint since that Court did not have jurisdiction over the Defendant. An alternative relief sought by the Defendant was a transfer of venue. See copy of Defendant's Motion to Dismiss attached hereto as Exhibit "A".

2. In its Order dated September 11, 2006, Judge Giles of the United States District Court for the Eastern District of Pennsylvania concluded that the Court had no personal jurisdiction over the Defendant and ordered transfer of venue to Delaware. See copy of Order attached as Exhibit "B".

3. The same Complaint that Plaintiff had filed in the Eastern District of Pennsylvania was filed in the United States District Court for the District of Delaware docket on 9/15/2006. Exhibit "C".

4. This is Defendant's Motion to Dismiss the Complaint. The action is time-barred under 10 Del. C. §8119, Delaware's two year statute of limitations for personal injury allegations. The Delaware statute of limitations is not tolled when a Plaintiff files a law suit against the Defendant in a Court which does not have in personam jurisdiction over the Defendant. This similar issue was raised in

the United States Court of Appeals for the Third Circuit in Barber Young, Personal Representative of the Estate of James Young v. Clantech, Inc., 863 F.2d 300; 1988 U.S. App LEXIS 17517.

5. In that case the United States Court of Appeals through the Third Circuit considered the same issue, only that law suit was filed in New Jersey. The Court in that matter considered the question of whether New Jersey's statute of limitations is tolled when a Plaintiff files a law suit against a Defendant in a Court which does not have in personam jurisdiction over the Defendant. The Appellant Court concluded that the New Jersey statute of limitations is not tolled by the filing of such a law suit. The Court reasoned that the exception contained in the doctrine of equitable remedy of tolling the statute of limitations could not be extended so far as to encompass this type of matter. The Court further reasoned that personal jurisdiction over a party was a defect that was qualitatively different from filing in a court which had personal jurisdiction over a party but lacked subject matter jurisdiction.

6. In the case at bar the District Court for the Eastern District of Pennsylvania specifically held that they did not have personal jurisdiction over the Defendant. The alleged injury occurred on August 5, 2004. The Complaint was not filed with the U.S. District Court for the District of Delaware, which had personal jurisdiction over the Defendant, until September 13, 2006. Therefore, this claim is time-barred by the applicable two year statute of limitations for the State of Delaware.

WHEREFORE, Defendant, Anthony Collick, respectfully requests that this honorable Court enter in an Order dismissing Plaintiff's Complaint with prejudice.

RESPECTFULLY SUBMITTED,

REGER RIZZO KAVULICH & DARNALL LLP

/s/ Cynthia G. Beam, Esquire

Cynthia G. Beam, Esquire

Delaware State Bar I.D. No. 2565

1001 Jefferson Plaza, Suite 202

Wilmington, DE 19801

(302) 652-3611

Attorney for Defendant

Dated: October 30, 2006

Exhibit E

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FRANCIS TULLY

Plaintiff

v.

ANTHONY COLLICK

Defendant

Civil Action No. 06-581 GMS

ORDER

WHEREAS, on November 17, 2006, the Court issued an Order directing the plaintiff to SHOW CAUSE, in writing, within thirty (30) days from the date of the Order, why the above-captioned case should not be dismissed for failure to prosecute (D.I. 13);

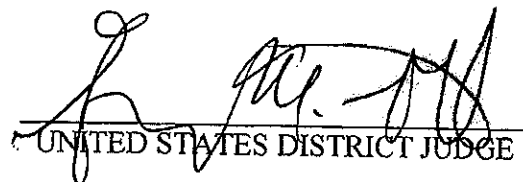
WHEREAS, the Plaintiff was also advised that failure to show cause within 30 days would lead to dismissal of this case, without prejudice, and without further notice;

WHEREAS, to date, the court's docket reflects that the plaintiff has not shown cause and has had no further contact with the court.

IT IS HEREBY ORDERED that:

1. The above-captioned civil action is dismissed without prejudice pursuant to District of Delaware Local Rule 41.1.

Dated: December 20, 2006


UNITED STATES DISTRICT JUDGE

